



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2013-0509; A-1-FRL-9906-95-Region 1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Decommissioning of Stage II Vapor Recovery Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire Department of Environmental Services. This revision includes regulatory amendments that require the decommissioning of Stage II vapor recovery systems at gasoline dispensing facilities by December 22, 2015, and a demonstration that such removal is consistent with the Clean Air Act and EPA guidance. The intended effect of this action is to propose approval of New Hampshire's revised vapor recovery regulation.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2013-0509 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: arnold.anne@epa.gov
3. Fax: (617) 918-0047.

4. Mail: "Docket Identification Number EPA-R01-OAR-2013-0509," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912.
5. Hand Delivery or Courier. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (mail code OEP05-2), Boston, MA 02109 - 3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R01-OAR-2013-0509. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your

comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency: Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.

FOR FURTHER INFORMATION CONTACT: Ariel Garcia, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square,

Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912, telephone number (617) 918-1660, fax number (617) 918-0660, email garcia.ariel@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose.
- II. Summary of New Hampshire’s Stage II Vapor Recovery Program SIP Revision.
- III. EPA’s Evaluation of New Hampshire’s SIP Revision.
- IV. Proposed Action.
- V. Statutory and Executive Order Reviews.

I. Background and Purpose.

On June 18, 2013, the New Hampshire Department of Environmental Services submitted a revision to its State Implementation Plan (SIP). The SIP revision consists of New Hampshire’s revised Env-Or 500, *Recovery of Gasoline Vapors* (formerly numbered Env-A 1205), and a demonstration that such removal is consistent with the Clean Air Act and EPA guidance.

Stage II and onboard refueling vapor recovery (ORVR) systems are two types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling. Stage II vapor recovery systems are installed at gasoline dispensing facilities (GDFs) and capture the refueling fuel vapors at the gasoline pump. The system carries the vapors back to the

underground storage tank at the GDF to prevent the vapors from escaping to the atmosphere.

ORVR systems are carbon canisters installed directly on automobiles to capture the fuel vapors evacuated from the gasoline tank before they reach the nozzle. The fuel vapors captured in the carbon canisters are then combusted in the engine when the automobile is in operation.

Stage II vapor recovery systems and vehicle ORVR systems were initially both required by the 1990 Amendments to the Clean Air Act (CAA). Section 182(b)(3) of the CAA requires moderate and above ozone nonattainment areas to implement Stage II vapor recovery programs. Also, under CAA section 184(b)(2), states in the Ozone Transport Region (OTR) are required to implement Stage II or comparable measures. CAA section 202(a)(6) required EPA to promulgate regulations for ORVR for light-duty vehicles (passenger cars). EPA adopted these requirements in 1994, at which point moderate ozone nonattainment areas were no longer subject to the CAA section 182(b)(3) Stage II vapor recovery requirements. ORVR equipment has been phased in for new passenger vehicles beginning with model year 1998, and starting with model year 2001 for light-duty trucks and most heavy-duty gasoline powered vehicles. ORVR equipment has been installed on nearly all new gasoline-powered light-duty vehicles, light-duty trucks, and heavy-duty vehicles since 2006.

During the phase-in of ORVR controls, Stage II has provided volatile organic compound (VOC) reductions in ozone nonattainment areas and certain attainment areas of the OTR. Congress recognized that ORVR systems and Stage II vapor recovery systems would eventually become largely redundant technologies, and provided authority to EPA to allow states to remove Stage II vapor recovery programs from their SIPs after EPA finds that ORVR is in “widespread use.” Effective May 16, 2012, the date the final rule was published in the Federal Register (see 77 FR 28772), EPA determined that ORVR systems are in widespread use nationwide for control of gasoline emissions during refueling of vehicles at GDFs. Currently, more than 75 percent of

gasoline refueling nationwide occurs with ORVR-equipped vehicles, so Stage II vapor recovery programs have become largely redundant control systems and Stage II vapor recovery systems achieve an ever declining emissions benefit as more ORVR-equipped vehicles continue to enter the on-road motor vehicle fleet.¹ In its May 16, 2012 rulemaking, EPA also exercised its authority under CAA section 202(a)(6) to waive certain federal statutory requirements for Stage II vapor recovery systems at GDFs. This decision exempts all new ozone nonattainment areas classified serious or above from the requirement to adopt Stage II vapor recovery programs. Finally, EPA's May 16, 2012 rulemaking also noted that any state currently implementing Stage II vapor recovery programs may submit SIP revisions that would allow for the phase-out of Stage II vapor recovery systems.

II. Summary of New Hampshire's Stage II Vapor Recovery Program SIP Revision.

New Hampshire adopted its Stage II Vapor Recovery Program in 1992 in order to satisfy the requirements of sections 182(b)(3) and 184(b)(2) of the CAA. The New Hampshire Stage II vapor recovery program requirements were codified in New Hampshire rule Env-A 1205, *Volatile Organic Compounds (VOC): Gasoline Dispensing Facilities and Gasoline Tank Trucks*, and EPA approved the program into the New Hampshire SIP on December 7, 1998 (63 FR 67405). New Hampshire's rule required gasoline dispensing facilities in Hillsborough, Merrimack, Rockingham, and Strafford counties to install Stage II vapor recovery systems. In addition, in a SIP revision dated July 9, 1998, New Hampshire identified comparable measures (a combination of emission reductions from the implementation of Stage II and reformulated

¹ In areas where certain types of vacuum-assist Stage II vapor recovery systems are used, the differences in operational design characteristics between ORVR and some configurations of these Stage II vapor recovery systems result in the reduction of overall control system efficiency compared to what could have been achieved relative to the individual control efficiencies of either ORVR or Stage II emissions from the vehicle fuel tank.

gasoline) to meet the CAA section 184(b)(2) requirement for a state in the OTR to adopt Stage II or comparable measures. EPA approved New Hampshire section 184(b)(2) Stage II comparability demonstration on September 29, 1999 (64 FR 52434).

On June 18, 2013, New Hampshire submitted a SIP revision requesting the removal of its Stage II vapor recovery program from the New Hampshire SIP. The SIP revision consists of New Hampshire's revised regulation Env-Or 500, *Recovery of Gasoline Vapors*, formerly known as Env-A 1205. The revised rule exempts new dispensing facilities from the requirements to install Stage II vapor recovery systems and requires existing Stage II vapor recovery systems to be decommissioned by December 22, 2015.

The June 18, 2013 SIP revision also includes a narrative demonstration supporting the removal of the New Hampshire Stage II vapor recovery program. This demonstration consists of an analysis that the Stage II vapor recovery controls provide only *de minimis* emission reductions due to the prevalence of ORVR-equipped vehicles. This demonstration also highlights that EPA redesignated the ozone nonattainment area in southern New Hampshire to attainment for the 1997 ozone national ambient air quality standard (NAAQS) on January 31, 2013 (78 FR 6741) and that EPA designated the entire state of New Hampshire as unclassifiable/attainment for the 2008 ozone NAAQS (77 FR 30088; May 21, 2012).

III. EPA's Evaluation of New Hampshire's SIP Revision.

EPA has reviewed New Hampshire's revised regulation Env-Or 500, *Recovery of Gasoline Vapors*, and accompanying SIP narrative and has concluded that New Hampshire's June 18, 2013 SIP revision is consistent with EPA's widespread use rule (77 FR 28772; May 16, 2012) and EPA's "Guidance on Removing Stage II Gasoline Vapor Control Programs from State

August 7, 2012), hereafter referred to as EPA’s Guidance Document.

New Hampshire’s June 18, 2013 SIP revision includes a CAA section 110(l) anti-back sliding demonstration based on equations in EPA’s Guidance Document. According to these calculations, the potential loss of refueling emission reductions from removing Stage II vapor recovery systems in 2012 (the effective date of the regulation amendments) is 9.36 percent, thus meeting the 10 percent *de minimis* recommendation in EPA’s Guidance Document.

In addition, New Hampshire’s ozone redesignation request, which EPA approved on January 31, 2013 (78 FR 6741), included a maintenance plan with future year emission estimates. The maintenance plan showed that estimated VOC and NO_x emissions in 2012 and 2022 were less than the 2008 attainment year VOC and NO_x emissions. The anticipated phase-out of New Hampshire’s Stage II program was included in these emission projections. Therefore, the maintenance plan estimates also support the position that discontinuing the Stage II program does not interfere with maintenance of the ozone NAAQS.

Finally, New Hampshire’s June 18, 2013 SIP revision also includes calculations illustrating that the overall emissions effect of removing the Stage II vapor recovery program would be an increase of 171 tons in 2012. EPA’s 2011 National Emissions Inventory database, Version 1, illustrates that New Hampshire’s statewide anthropogenic VOC emissions were 44,974 tons (see www.epa.gov/ttn/chief/net/2011inventory.html), therefore the 171 annual tons of VOC emissions increase calculated by New Hampshire are only about 0.4 percent of the total anthropogenic VOC emissions in New Hampshire. Also, these foregone emissions reductions in the near term continue to diminish rapidly over time as ORVR phase-in continues. Therefore, EPA believes that the resulting temporary increases in VOC emissions will not interfere with maintenance of the ozone NAAQS.

IV. Proposed Action.

EPA is proposing to approve New Hampshire's June 18, 2013 SIP revision. Specifically, EPA is proposing to approve the amended New Hampshire rule Env-Or 500, *Recovery of Gasoline Vapors*, and incorporate it into the New Hampshire SIP. EPA is proposing to approve this SIP revision because it meets all applicable requirements of the Clean Air Act and EPA guidance, and it will not interfere with attainment or maintenance of the ozone NAAQS.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this Federal Register.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65

FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 et seq.

H. Curtis Spalding,
Regional Administrator,
EPA New England.

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